

REMARKS

Claims 1, 3-10, 12-15 and 17-50 are pending in this application. Claims 2, 11 and 16 have been canceled without prejudice or disclaimer. Claims 4-7, 10 and 20-48 have been withdrawn as being directed to non-elected subject matter. Claims 1, 49 and 50 have been amended.

Claims 2, 11 and 16 have been canceled without prejudice or disclaimer, and claims 1, 49 and 50 have been amended, for the sole reason of advancing prosecution. Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

Claims 1, 49 and 50 have each been amended to recite "[a] system for minimally invasive breast lifting ***and imparting a breast with natural and lifted shape.***" (Emphasis added). Support for the amendment to claims 1, 49 and 50 can be found throughout the specification and claims as originally filed.

No new matter has been added.

In view of the remarks set forth below, further and favorable consideration is respectfully requested.

I. Interview

Applicants respectfully thank Examiner Sweet for conducting the in-person interview of August 19, 2009 with Applicants' undersigned representative and Applicants' Israeli Patent Attorney, as well as for conducting the telephone interview of September 2, 2009 with Applicants' undersigned representative. Applicants further thank the Examiner for the indication that the proposed claim language, i.e., "[a] system for minimally invasive breast lifting **and imparting a breast with natural and lifted shape...wherein the system is configured to lift and thereby impart the breast with a natural shape**," appears to overcome the rejections of record. Accordingly, Applicants have incorporated the proposed claim language into the presently presented claims.

II. At page 2 of the Official Action, claims 1, 3, 8, 9, 12-15, 17, 19, 49 and 50 have been rejected under 35 USC § 102(e) as anticipated by Browning (US Patent No. 6,960,160).

The Examiner asserts that Browning anticipates the subject matter recited in claims 1, 3, 8, 9, 12-15, 17, 19, 49 and 50.

In view of the remarks set forth herein, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Independent claim 1 is directed to a system for minimally invasive breast lifting and imparting a breast with natural and lifted shape, the system comprising: one or more anchors adapted to be fixed to a posture tissue above a desired nipple level; two or more readily adjustable suspension members suspended from the one or more anchors each readily adjustable suspension member having a free end; and a cradling portion having a first end and a second end and being configured to cradle the breast from below, the first end and the second end of the cradling portion being integral with and/or movably attached to the free end of a respective suspension member, and the cradling portion having a width greater than the width of each of the two or more readily adjustable suspension members, wherein the system is configured to lift and thereby impart the breast with a natural shape. Claims 3, 8, 9, 12-15, 17 and 19 each depend, either directly or indirectly, from claim 1.

Claim 49 is directed to a system for minimally invasive breast lifting and imparting a breast with natural and lifted shape, the system comprising: one or more anchors adapted to be fixed to a posture tissue above a desired nipple level; two or more readily adjustable suspension members having an anchoring end, and a cradling end, the two or more readily adjustable suspension members being suspended from the one or more anchors at the anchoring end and being movably attached or fixed to the one or more anchors; a cradling portion having a first end movably attached to and/or integral with the cradling end of one of the two or more readily adjustable suspension members, and a second end movably attached to and/or integral with the cradling end of one of the

two or more readily adjustable suspension members the cradling portion being configured to cradle the breast from below and the cradling portion having a width greater than the width of each of the two or more readily adjustable suspension members, wherein the system is configured to lift and thereby impart the breast with a natural shape.

Claim 50 is directed to a system for minimally invasive breast lifting and imparting a breast with natural and lifted shape, the system comprising: one or more anchors adapted to be fixed to a posture tissue above a desired nipple level; at least one readily adjustable suspension members having at least one an anchoring point, and at least one a cradling point, the at least one readily adjustable suspension members being suspended from the one or more anchors at the at least one anchoring point and being movably attached to and/or integral with the one or more anchors; a cradling portion having a first end movably attached to and/or integral with the at least one cradling point of one of the at least one readily adjustable suspension members, and a second end movably attached to and/or integral with the cradling end of one of the at least one readily adjustable suspension members the cradling portion being configured to cradle the breast from below and the cradling portion having a width greater than the width of each of the two or more readily adjustable suspension members, wherein the system is configured to lift and thereby impart the breast with a natural shape.

In contrast to the presently pending claimed subject matter, Browning is directed to a surgical implant and method for supporting the urethra. The implant described by Browning comprises a suburethral support suspended between two soft tissue anchors that do not penetrate the lower abdominal wall and are attached at either side of the

suburethral support. According to Browning, "[t]he implant has uses including treating urinary incontinence and uterovaginal prolapsed." See Browning at the abstract.

However, unlike the presently claimed subject matter, Browning does not teach, at least, "[a] system for minimally invasive breast lifting **and imparting a breast with natural and lifted shape...wherein the system is configured to lift and thereby impart the breast with a natural shape,**" as presently claimed. In this regard, Applicants note that Browning is directed to an implant for supporting the urethra. Applicants submit that due to the structure of the suburethral support described by Browning, as well as the overall structure of implant itself, the implant would not be sufficient **to lift and thereby impart the breast with a natural shape**, as recited in the present claims. Accordingly, Applicants submit that Browning does not teach every element recited in the presently pending claims.

Accordingly, Applicants submit that Browning does not anticipate presently claimed subject matter within the meaning of 35 USC § 102(e). Thus, the Examiner is respectfully requested to withdraw this rejection of claims 1, 3, 8, 9, 12-15, 17, 19, 49 and 50.

III. At page 3 of the Official Action, claim 18 has been rejected under 35 USC § under 35 USC § 103(a) as being obvious Browning.

The Examiner asserts that it would have been obvious to substitute joining together the ends of the suspender around a bone for the anchor members in order to anchor the suspender.

Applicant respectfully traverses this rejection because a *prima facie* case of obviousness has not been established.

To establish a *prima facie* case of obviousness, the Examiner must satisfy three requirements. First, as the U.S. Supreme Court very recently held in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." (*KSR*, 550 U.S. 398 at 417.) Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

It is submitted that a *prima facie* case of obviousness has not been established because nothing in the applied references teach or suggest all of the elements of the present claims, as required by *In re Wilson*.

Independent claim 1 is directed to a system for minimally invasive breast lifting and imparting a breast with natural and lifted shape, the system comprising: one or more anchors adapted to be fixed to a posture tissue above a desired nipple level; two or more readily adjustable suspension members suspended from the one or more anchors each readily adjustable suspension member having a free end; and a cradling portion having a first end and a second end and being configured to cradle the breast from below, the first end and the second end of the cradling portion being integral with and/or movably attached to the free end of a respective suspension member, and the cradling portion having a width greater than the width of each of the two or more readily adjustable suspension members, wherein the system is configured to lift and thereby impart the breast with a natural shape. Claim 18 depends indirectly from claim 1.

As discussed, Browning is directed to a surgical implant and method for supporting the urethra. The implant described by Browning comprises a suburethral support suspended between two soft tissue anchors that do not penetrate the lower abdominal wall and are attached at either side of the suburethral support. According to Browning, "[t]he implant has uses including treating urinary incontinence and uterovaginal prolapsed." See Browning at the abstract.

However, unlike the presently claimed subject matter, Browning does not teach, at least, "[a] system for minimally invasive breast lifting **and imparting a breast with natural and lifted shape... wherein the system is configured to lift and thereby impart the breast with a natural shape,**" as presently claimed. In this regard, Applicants note that Browning is directed to an implant for supporting the urethra. Applicants submit that due to the structure of the suburethral support described by

Browning, as well as the overall structure of implant itself, the implant would not be sufficient ***to lift and thereby impart the breast with a natural shape***, as recited in the present claims. Accordingly, Applicants submit that Browning does not teach or suggest every element recited in the presently pending claims.

CONCLUSION

In view of the foregoing, Applicant submits that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP

A handwritten signature in black ink, appearing to be 'G. Nath', written over a horizontal line.

Gary M. Nath
Registration No. 26,965
Susanne M. Hopkins
Registration No. 33,247
Ari G. Zytcer
Registration No. 57,474
Customer No. 20529

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THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Tel: (703) 548-NATH
Fax: (703) 683-8396